(Published 31st May, 2024)

Act

No. 20 of 2024

I assent

DR. LAZARUS MCCARTHY CHAKWERA
PRESIDENT
19th May, 2024

ARRANGEMENT OF SECTIONS

PART I—PRELIMINARY

1 Short title and commencement
2. Interpretation
3. Application

PART II—THE COMPETITION AND FAIR TRADING COMMISSION

4. Establishment of the Commission
5. Functions of the Commission
6. Powers of the Commission
7. Membership of the Commission
8. Tenure of office and vacancies
9. Removal from office
10. Meetings of the Commission
11. Committees of the Commission
12. Invited persons
13. Allowances and expenses
14. Secretariat of the Commission
15. Chief Executive Officer of the Commission
16. Removal of the Chief Executive Officer
17. Other employees of the Commission

PART III—FINANCIAL PROVISIONS

18. Funds of the Commission
19. Levy

SECTION
20. Accounts and audits

PART IV—GENERAL POWERS OF THE COMMISSION
21. Powers of investigation
22. Administrative orders
23. Interim measures

PART V—ANTI-COMPETITIVE BUSINESS CONDUCT
24. Prohibition of anti-competitive practices
25. Defences observed for anti-competitive agreements
26. Prohibited activities
27. Prohibition of agreements between enterprises at the same level of production and supply
28. Prohibition of abuse of dominance
29. Defences observed for abuse of dominance
30. Grant of authorizations
31. Abuse of buyer power
32. Remedies and decision of the Commission for anti-competitive conduct
33. Advisory opinion
34. Market studies and market inquiries

PART VI—REVIEW AND CONTROL OF MERGERS
35. Merger defined
36. Transactions subject to merger control
37. Mergers to require formal approval
38. Acquisition of control defined
39. Acquisition of relevant assets defined
40. Threshold for proposed mergers
41. Assessment criteria for mergers
42. Public interest assessment
43. Formal approval of a merger
44. Commission action in relation to reviewed mergers
45. Prior implementation of a merger
46. Failure to file for formal approval, or prior implementation, of a merger
47. Proposals and measures for remedying a merger
48. Action in relation to abandoned mergers
49. Revocation of approval
50. Negative clearance

SECTION

PART VII—UNFAIR TRADING PRACTICES

51. Unfair trading
52. Unfair consumer contracts
53. Procedures and remedies for unfair trading practices

PART VIII—POWERS OF THE COURT

54. Civil remedies
55. Enforcement of orders of the Commission
56. Appeals
57. Third party liability

PART IX—SETTLEMENT OF INFRINGEMENTS AND LENIENCY PROGRAMMES

58. Settlement of an infringement
59. Leniency programme

PART X—CROSS-BORDER COOPERATION

60. Form of cooperation with multilateral or regional competition or consumer authorities
61. Enforceability of the decisions of the multilateral or regional competition or consumer authority
62. Cooperation with other States
63. Definitions

PART XI—MISCELLANEOUS

64. Annual reports
65. Common seal
66. Disclosure of interests
67. Oath of secrecy
68. Confidentiality
69. Protection of Commissioners and employees of the Commission
70. Offences and penalties
71. Offences committed by bodies corporate
72. Limitation of time
73. Regulations, guidelines, notices and forms
74. Government to be bound
75. Repeal and savings
76. Transitional matters

An Act to encourage competition in the economy by prohibiting anti-competitive trade practices; establish the Competition and Fair Trading Commission; regulate and monitor monopolies and concentrations of economic power; protect consumer welfare; strengthen the efficiency of production and distribution of goods, digital products and services; to secure the best possible conditions for the freedom of trade; facilitate the expansion of the base of entrepreneurship; and to provide for matters incidental thereto or connected therewith.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Competition and Fair Trading Act, 2024, and shall come into force on a date to be appointed by the Minister, by notice published in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—

"affiliated" means an association of any two enterprises where—

(*a*) one of the enterprises is a holding entity of the other enterprise; or

(*b*) both enterprises are subsidiaries of the same holding entity;

"agreement" includes any agreement, arrangement or understanding, whether oral or in writing, or whether or not the agreement is legally enforceable or is intended to be legally enforceable;

"annual income" means the total amount in cash or otherwise, including any capital gain, received by or accrued to, or in favour of, a person or an enterprise in any year, from a source within Malawi or deemed to be within Malawi;

"buyer power" means the influence exerted by an undertaking or group of undertakings in the position of a purchaser of a product or service to—

(*a*) obtain from a supplier more favourable terms; or

(*b*) impose a long-term opportunity cost including harm or withheld benefit, which, if carried out, would be significantly disproportionate to any resulting long term cost to the undertaking or group of undertakings;

"Chairperson" means the Chairperson of the Commission appointed pursuant to section 7(2);

"Chief Executive Officer" means the Chief Executive Officer of the Commission appointed pursuant to section 15;

"Commission" means the Competition and Fair Trading Commission established under section 4;

"Commissioner" means a member of the Commission appointed under to section 7;

"Committee" means a Committee of the Commission established under section 11;

"complaint" means any reporting of information concerning an alleged prohibited, anti-competitive business practice, or unfair trading practice to the Commission, in any manner or form;

"concerted practice" means co-operative or coordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement;

"confidential information" means—

(*a*) commercial, trade, business, or industry information—

(i) whose disclosure, the Commission considers, may significantly harm the legitimate business interests of the enterprise to which it relates; or

(ii) belonging to a firm, which is not generally available to, or known by, other firms, and the Commission considers such information to be of a particular economic value;

(*b*) information relating to the private affairs of an individual whose disclosure, the Commission considers, may significantly harm the individual's interests; and

(*c*) information whose disclosure, the Commission considers, is contrary to the public interest;

"consumer" includes a person who—

(*a*) purchases or offers to purchase goods, digital goods or services supplied by an enterprise, in the course of business, and includes an enterprise which either uses the product or service supplied as an input to its own business or as a wholesaler, a retailer or as a final user; and

(*b*) uses goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services;

"Court" means the Commercial Division of the High Court established under section 6A (1) (*b*) of the Courts Act; Cap. 3:02

"digital product" means a computer programme, text, video, image, sound recording, or any other product that is digitally encoded, produced for commercial sale or distribution, and that can be transmitted electronically, except for a digitized representation of a financial instrument, including money;

"document" includes electronic records as defined under section 2 of the Electronic Transactions and Cyber security Act; Cap. 74:02

"enterprise" means a firm, partnership, joint venture, corporation, company, association and other juridical persons, irrespective of whether created or controlled by private persons or by the state, which engage in economic activity, and includes their branches, subsidiaries, affiliates or other entities, directly or indirectly, controlled by them;

"goods" include all kinds of moveable and immovable property, money, securities, choses in action and any reasonable substitutes thereto, taking into account ordinary use, functionality, commercial practice and geographical, technical and temporal constraints;

"invited person" means a person invited to attend a meeting of the Commission or a Committee pursuant to section 12;

"know-how" means information that is kept confidential in order to preserve competitive gains and shall include unregistered designs, business processes, trade and business secrets, and other practical and non-patented information, identifiable business processes, or other secret, significant, useful and practical methods;

"market" refers to goods, digital products or services supplied in, Malawi, and when used in relation to any goods, digital products or services, includes a market for those goods, digital products or services and other goods, digital products or services that are substitutable for, or otherwise competitive with, the first-mentioned goods, digital products or services;

"person" includes an individual, a company, a partnership, an enterprise, an association and any group of persons acting in concert, whether incorporated or not;

"Public Appointments Committee" means the Public Appointments Committee of the National Assembly, established under section 56 (7) of the Constitution;

"Secretariat" means the Secretariat of the Commission established under section 14;

"services" includes a service of any description, whether industrial, trade, professional, or otherwise;

"small and medium enterprises" means an enterprise including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts and qualified as such under the criteria and size standards in the relevant instruments of the Ministry responsible for industry and trade;

"trading practice" means any practice related to the carrying on of any trade and includes anything done or proposed to be done by any person, which affects or is likely to affect the method of trading of any trade or class of traders or the production, supply or price in the course of trade of any goods whether real or personal, digital products or of any service; and

"turnover" means the amounts accrued from the sale of goods, digital products or services.

Application

3.—(1) Subject to subsection (3), this Act shall apply to all economic activities within, or having an effect on, Malawi.

(2) Subject to the Constitution, in all matters concerning anti-competitive business conduct and review and control of mergers, where there is any conflict or inconsistency, the provisions of this Act or the decisions of the Commission made pursuant to this Act shall prevail.

(3) Nothing in this Act shall apply to—

(*a*) activities of employees for their own reasonable protection as employees;

(*b*) arrangements for collective bargaining on behalf of employers and employees for the purpose of fixing terms and conditions of employment under the Labour Relations Act; Cap. 54:01

(*c*) activities of trade unions and other associations directed at advancing the terms and conditions of employment of their members under the Labour Relations Act; Cap. 54:01

(*d*) elements of any agreement which relate exclusively to the use, licence or assignment of rights under, or existing by virtue of, any copyright, patent or trademark;

(*e*) any act done to give effect to a provision of an agreement referred to in paragraph (*d*);

(*f*) activities expressly approved or required under a treaty or agreement to which Malawi is a party; or

(*g*) activities of professional associations which relate exclusively to the development and enforcement of professional standards of competence reasonably necessary for the protection of the public.

PART II—THE COMPETITION AND FAIR TRADING COMMISSION

Establishment of the Commission

4.—(1) There is hereby established a body to be known as the Competition and Fair Trading Commission.

(2) The Commission shall be—

(*a*) a body corporate with perpetual succession; and

(*b*) capable of doing or performing all other things or acts as body corporates do, for the proper administration of this Act.

Functions of the Commission

5.—(1) The Commission shall regulate, monitor, control and prevent acts or behaviour which are likely to substantially affect competition and fair trading in Malawi.

(2) Without derogation from the generality of subsection (1), the Commission shall—

(*a*) keep under review commercial activities in, or into, Malawi with a view to ascertaining practices which may substantially affect the welfare and economic interests of consumers in a market in Malawi;

(*b*) conduct such inquiries and market surveillances as it may consider necessary or desirable, in connection with any matter falling within the provisions of this Act;

(*c*) advise the Minister on such matters relating to the operation of this Act as it thinks fit or as may be requested by the Minister;

(*d*) take such action as it considers necessary with respect to any abuse of a dominant position by any enterprise that has an effect on consumers in a market in Malawi;

(*e*) eliminate—

(i) anti-competitive agreement that has an effect on consumers in a market in Malawi; and

(ii) unfair trading practices in Malawi;

(*f*) review and control mergers having an effect in, or into, Malawi;

(*g*) undertake advocacy, research and market studies to advance the goal of this Act;

(*h*) co-operate with and assist any association or body of persons in developing and promoting the observance of standards for the purpose of ensuring compliance with the provisions of this Act; and

(*i*) carry out such other functions as are required to give effect to this Act or any other written law.

Powers of the Commission

6. The Commission may—

(*a*) order, on its own initiative or at the request of any person, such investigations in relation to the conduct of business as will enable it to determine whether any enterprise is engaging in business practices in contravention of this Act and impose such sanctions, as may be necessary;

(*b*) issue determinations on any conduct prohibited under this Act and make orders provided for in this Act; and

(*c*) carry out such other powers as are required to give effect to this Act.

Membership of the Commission

7.—(1) The Commission shall consist of—

(*a*) the following Commissioners to be appointed by the Minister—

(i) two persons representing business interests, one of whom shall be a member of the Malawi Confederation of Chambers of Commerce and Industry;

(ii) two persons representing consumer interests;

(iii) one legal practitioner, with at least ten years of commercial law work experience and possesses a valid practising licence in accordance with the Legal Education and Legal Practitioners Act; No. 31 of 2018

(iv) one economist, with at least ten years of work experience, who is a member of an association of economists in Malawi; and

(v) one chartered accountant, registered under the Public Accountants and Auditors Act; and Cap. 51:06

(*b*) the following *ex-officio* Commissioners—

(i) the Secretary to the Treasury or his or her representative;

(ii) the Secretary responsible for trade or his or her designated representative;

(iii) the Solicitor General or his or her designated representative; and

(iv) the Director General of the Malawi Bureau of Standards or his or her designated representative.

(2) The Minister shall appoint the Chairperson of the Commission from among the Commissioners appointed under subsection (1)(*a*).

(3) A person shall not be qualified for appointment as a Commissioner under subsection (1)(*a*), if that person—

(*a*) does not possesses a minimum education qualification of a bachelor's degree obtained from an institution recognized or accredited under the National Council for Higher Education Act;

Cap. 30:12

(*b*) does not have at least five years' post qualification work experience;

(*c*) holds a political office;

(*d*) is an undischarged bankrupt; or

(*e*) would, for any other reason, be disqualified by law from serving as a trustee or director of a company.

(4) The Minister shall, in making appointments under subsection (1)(*a*), (*b*), (*c*), (*d*) and (*e*)—

Cap. 25:06

(*a*) take into account the provisions of the Gender Equality Act; and

(*b*) have regard to the need for continuity in the membership of the Commission so that at least two Commissioners of the immediate past Commission shall be retained.

(5) A Commissioner, other than an *ex-officio* Commissioner, shall not, by reason only of the appointment as a Commissioner, be deemed to be an employee in the public service.

(6) The Minister shall publish, in the *Gazette*, names of all the Commissioners as first constituted and every subsequent change in the membership.

(7) An appointment of a Commissioner pursuant to subsection (1)(*a*) shall be subject to confirmation by the Public Appointments Committee.

Tenure of office and vacancies

8.—(1) A Commissioner, other than an *ex-officio* Commissioner, shall hold office for a period of three years and may be reappointed for another three-year term.

(2) The office of a Commissioner shall become vacant—

(*a*) upon expiry of the member's term of office;

(*b*) if he or she resigns by giving one month notice, in writing, to the Minister;

(*c*) upon his or her death;

(*d*) if he or she knowingly fails to declare a conflict of interest relating to any matter under consideration by the Commission;

(*e*) if he or she is absent without valid excuse from three consecutive meetings of the Commission of which he or she has had notice;

(*f*) if he or she is adjudged to be bankrupt;

(*g*) if he or she participates, directly or indirectly, in an activity which is in contravention of this Act;

(*h*) upon the Commissioner being convicted of an offence and sentenced to a term of imprisonment;

(*i*) if he or she is removed from his or her office for misconduct that is inconsistent with the discharge of his or her duties as a Commissioner;

(*j*) if he or she becomes, by reason of mental or physical infirmity, whereupon a suitably qualified medical practitioner certifies that the Commissioner is no longer, by reason of the illness, capable of performing duties of the office of Commissioner; or

(*k*) if any circumstances arise that, if he or she were not a Commissioner, would cause that Commissioner to be disqualified for appointment as a Commissioner.

(3) The Minister shall, within sixty days of the occurrence of the vacancy in the membership of the Commission, appoint a new Commissioner, in accordance with section 7.

(4) The period served by a person appointed under subsection (3) shall not be regarded as a term for purposes of subsection (1).

(5) A person appointed to fill a vacancy under subsection (3) shall serve the remainder of the term of office, but no person shall be appointed to fill a vacancy of the remainder of a term of office where the remainder of the term is less than six months.

(6) Subject to section 10(5), a vacancy in the office of Commissioner shall not affect a decision, the performance of functions or the exercise of powers of the Commission under this Act or any other written law.

Removal from office

9. The Minister may, subject to approval of the Public Appointment Committee, remove from office, a Commissioner other than an *ex-officio* Commissioner, on any of the following grounds—

(*a*) misconduct that brings the Commission into disrepute;

(*b*) incompetence in the execution of the functions of the office of Commissioner;

(*c*) failure to declare a conflict of interest relating to any matter under consideration by the Commission;

(*d*) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Commission obtained in the course of duty or otherwise; or

(*e*) being compromised to the extent that his ability to exercise the duties of the office of Commissioner impartially and effectively is seriously in question.

Meetings of the Commission

10.—(1) The Commission shall meet to conduct its business at least once every three months, at such places and times as the Chairperson may, in consultation with the Chief Executive Officer, determine.

(2) An extraordinary meeting of the Commission—

(*a*) may be convened by the Chairperson at any time; and

(*b*) shall be convened by the Chairperson within seven days of receipt by him of a request, in writing, signed by not less than two Commissioners, specifying the purpose for which the meeting is to be convened.

(3) The Chairperson shall convene meetings of the Commission by giving the other Commissioners at least seven days written notice, unless the Chairperson notifies the members, in writing, that the urgency of the matter to be discussed requires a shorter period of notice.

(4) The Chairperson shall preside over meetings of the Commission and in the absence of the Chairperson, the Commissioners present and forming a quorum shall elect one of their number to preside over the meeting.

(5) The quorum for any meeting of the Commission shall be two-thirds of all Commissioners.

(6) At any meeting of the Commission, a decision on any matter shall be that of the majority of the members present and voting at that meeting and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his or her deliberative vote.

(7) Subject to the other provisions of this Act, the Commission may regulate its own procedure.

Committees of the Commission

11.—(1) The Commission may, for the purpose of performing its functions under this Act, establish committees of the Commission, and delegate to any such committees any of its functions as it considers necessary.

(2) Notwithstanding subsection (1), the Commission shall establish a Technical Committee which shall hear applications for, and make recommendations to the Commission on, mergers and acquisitions, cases of anti-competitive conduct and unfair trade practices and any other function as the Commission deems fit.

(3) The chairperson of every Committee shall be a Commissioner appointed pursuant to section 7 (1)(*a*).

(4) The Chairperson shall not be a member of a Committee.

(5) Subject to the general or special directions of the Commission and to the provisions of this Act, every Committee shall have power to determine its own procedure.

Invited persons

12. The Commission or its Committee may, at its discretion, invite any person with specific knowledge, information or expertise to attend any of its meetings and address it on a matter, but such person shall not be eligible to vote at the meeting on any decision of the Commission or the Committee, as the case may be.

Allowances and expenses

13.—(1) The Commissioners, members of Committees or an invited person shall be paid such allowances as the Minister shall determine, on recommendation of the Government department responsible for human resource development and management.

(2) The Commission may reimburse any reasonable expenses incurred by a Commissioner, a member of a Committee or an invited person, as the case may be.

Secretariat of the Commission

14.—(1) The Secretariat of the Commission, which shall consist of the Chief Executive Officer and other employees of the Commission appointed in accordance with this Act.

(2) The Secretariat shall, on behalf of the Commission, be responsible for enforcing competition and consumer protection law and policy, through conducting investigations, market studies, market inquiries, enforcement of the Commission's decisions, and carry out such other functions as are required to give effect to this Act.

(3) The Chief Executive Officer or such other officer of the Commission as the Chief Executive Officer may designate, shall attend meetings of the Commission and of any Committee and may address such meetings, but shall not vote on any matter.

Chief Executive Officer of the Commission

15.—(1) The Commission shall appoint, on such terms and conditions as it may determine, a Chief Executive Officer of the Commission who shall perform such duties as the Commission shall assign to his or her office and ensure the effective administration and implementation of this Act.

(2) Without derogation from the generality of the responsibilities and duties of the Chief Executive Officer conferred under subsection (1), the Chief Executive Officer shall be responsible for the day-to-day administration of the Commission.

(3) The Chief Executive Officer shall be appointed through a competitive process and on such terms and conditions as the Commission shall determine.

(4) A person shall not be appointed as Chief Executive Officer, unless the person—

(*a*) possesses a minimum qualification of a master's degree in a relevant field from a reputable education institution accredited or recognized under the National Council for Higher Education Act;

Cap. 30:12

(*b*) has proven and demonstrable expertise in competition and fair trading matters, consumer protection matters, economics, law, finance, commerce, administration or any field relevant to the functions and responsibilities of the Commission;

(*c*) has at least ten years' experience in executive management; and

(*d*) does not hold a political office.

Removal of the Chief Executive Officer

16.—(1) The Commission may terminate the appointment of a Chief Executive Officer on any of the following grounds—

(*a*) incompetence in the execution of the functions of the office;

(*b*) incapacity to perform the functions of the office;

(*c*) being convicted of an offence and sentenced to a term of imprisonment;

(*d*) being declared or adjudged bankrupt by a competent court of law;

(*e*) failure to declare a conflict of interest relating to any matter under consideration by the Commission;

(*f*) disclosure or publication to any other person or entity, other than in the course of duty, of any confidential information of the Commission obtained in the course of duty or otherwise; or

(*g*) being found guilty of misconduct punishable by dismissal under the employment contract.

(2) The Commission shall not terminate the appointment of an Chief Executive Officer, unless he or she is given an opportunity to be heard.

Other employees of the Commission

17.—(1) The Commission may appoint, on such terms and conditions as it may determine, such other employees of the Commission, subordinate to the Chief Executive Officer, as it considers necessary for the performance of its functions and to assist the Chief Executive Officer in discharging his or her duties and responsibilities.

(2) The Commission may, by directions in writing, delegate to the Chief Executive Officer, the power to appoint, discipline or dismiss other employees of the Commission, in specified junior ranks and the Chief Executive Officer shall report to the Commission, at its next meeting, every appointment, discipline or dismissal made pursuant to this subsection.

(3) The other employees of the Commission referred to in subsection (1) shall be appointed on such terms and conditions as the Commission shall determine, after consulting with the Government Department responsible for human resource management and development.

(4) The provisions of section 16 shall apply, with the necessary modifications, to dismissal of other employees of the Commission employed pursuant to this section.

Part III—Financial Provisions

Funds of the Commission

18.—(1) The funds of the Commission shall consist of—

(*a*) such sums as may be appropriated by Parliament for the purposes of this Act;

(*b*) such sums of monies as may accrue to or be received by the Commission by way of fees, subsidies, contributions, subscriptions, charges, penalties, levies, rents, interest or royalties from the Government or any person;

(*c*) monies paid to the Commission by way of grants or donations;

(*d*) monies made available to, or borrowed by, the Commission, for the purpose of the Commission; or

(*e*) any other monies which may in any manner become payable to, or vested in, the Commission in respect of any matter incidental to its functions.

(2) All fees and monetary penalties paid to the Commission, shall be utilized solely for the purposes of this Act, in accordance with the written directions of the Commission and for no other purpose.

(3) The Commission shall, at all times, comply with the provisions of the Public Audit Act, the Public Finance Management Act and the Public Procurement and Disposal of Public Assets Act.

Cap. 37:01
No. 4 of 2022
Cap. 37:03

Levy

19. The Minister, acting on the recommendation of the Commission, and in consultation with the Minister responsible for finance, may by order published in the *Gazette*, impose a levy on such commercial matters as he or she may determine and such levy shall be appropriated for the general operations of the Commission.

Accounts and audits

20.—(1) The Commission shall cause to be kept proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Public Finance Management Act.

No. 4 of 2022

(2) The accounts and records of the Commission shall be audited at the end of each financial year, by the Auditor General, or by independent professional auditors appointed by the Commission after consulting the Auditor General, and the expenses of the audit shall be paid out of the funds of the Commission.

(3) The financial year of the Commission shall be a period of twelve months in line with the Government financial year.

Part IV—General Powers of the Commission

Powers of investigation

21.—(1) For the purposes of carrying out its investigative functions under this Act, the Commission may—

(*a*) summon and examine witnesses;

(*b*) apply to a competent court of law for a search warrant;

(*c*) call for, and examine, any documents;

(*d*) enter, search, and carry out inspection of premises, including goods, digital products and services on the premises;

(*e*) administer oaths;

(*f*) require that any document submitted to the Commission be verified by a sworn statement;

(*g*) adjourn any investigation, from time to time;

(*h*) require the furnishing of such returns or information as it may require from such persons as it may specify by notice;

(*i*) determine and order the remedies and penalties applicable to any conduct regulated under this Act; and

(*j*) register any order it may have made, with the Court.

(2) In exercising its powers under this Part, the Commission may—

(*a*) hear orally any person who, in its opinion, will be affected by an investigation under this Act and shall so hear the person if the person has made a written request for a hearing, showing that he or she is an interested party, likely to be affected by the result of the investigation or that there are particular reasons why he or she should be heard orally; and

(*b*) require a person engaged in business or a trade or such other person as the Commission considers appropriate, to state such facts concerning goods and digital products manufactured, produced or supplied by him or her as the Commission may think necessary, to determine whether the conduct of the business in relation to the goods, digital products or services constitutes an anti-competitive practice.

Administrative orders

22.—(1) For the purposes of resolving a matter deemed to be an infringement of this Act, the Commission may issue any of the following administrative orders—

(*a*) declare certain business practices to be abuses of dominant position;

(*b*) order enterprises to cease and desist from any form or conduct that has, or is likely to have, as its object or effect the lessening of competition;

(*c*) order the termination of an agreement;

(*d*) prohibit the making, or carrying out, of an agreement or the putting into effect of any anti-competitive term or condition of an agreement;

(*e*) prohibit and remedy unfair trading practices;

(*f*) order a product refund or exchange;

(*g*) impose a monetary penalty for anti-competitive conducts or unfair trading practices;

(*h*) issue an order for the recall of a product established to be defective;

(*i*) require a person found to be in infringement of this Act to publish a notice of the infringing conduct in any media or form designated by the Commission;

(*j*) make applications to the Registrar of the Court, for the purpose of enforcing an order it has made; and

(*k*) suspend or order the application of conditions to a merger which is likely to substantially lessen competition on a market, in Malawi.

(2) Pursuant to the powers conferred under subsection (1)(*g*), the Commission may impose a monetary penalty, payable to the Commission, of up to—

(*a*) ten per cent of gross annual turnover, in the case of an enterprise; or

(*b*) five per cent of gross annual income, in the case of an individual.

(3) In determining an administrative order under this section, the Commission shall consider the following factors—

(*a*) the nature, duration, gravity and extent of the infringement;

(*b*) the damage suffered by a person, an industry or the economy, as a result of the infringement;

(*c*) the degree to which the infringing party cooperated with the Commission during the investigation;

(*d*) whether the infringing party has engaged in the infringing conduct complained of or any other infringement of the Act in the past; and

(*e*) any other mitigating or aggravating factors.

(4) Where the Commission imposes an administrative order under this section, it shall apply to the Court for registration of the order.

(5) An administrative order issued by the Commission and registered by the Court shall have the force and effect akin to an order issued by the Court.

Interim measures

23.—(1) Where the Commission, before it reaches a final decision on a matter, believes, on reasonable grounds, that an undertaking has engaged, is engaging, or is proposing to engage, in conduct that constitutes or may constitute an infringement of this Act and that it is necessary for the Commission to act as a matter of urgency for the purpose of—

(*a*) preventing serious, irreparable damage to any person or category of persons; or

(*b*) protecting the public interest,

the Commission may, by order in writing, direct an enterprise or undertaking to stop and desist from engaging in such conduct until the on-going investigation is concluded.

(2) A person or enterprise affected by an interim measure may apply to the Court to set aside the decision of the Commission made pursuant to subsection (1).

(3) Any person that fails to comply with an interim measure imposed under subsection (1) commits an offence.

PART V—ANTI-COMPETITIVE BUSINESS CONDUCT

Prohibition of anti-competitive trade practices

24.—(1) Any agreement, decision and concerted practice, whether by object or by effect, which is likely to result in the prevention, restriction or distortion of competition to a substantial extent in, or into, Malawi or in any substantial part thereof is declared an anti-competitive trade practice and is hereby prohibited.

(2) Subject to the provisions of subsection (1), a person shall refrain from the following acts or behavior, if the acts or behaviors limit access to markets or otherwise unduly restrain competition, or have, or are likely to have, adverse effect on trade or the economy in general—

(*a*) predatory behaviour towards competitors, including the use of cost pricing to damage, hinder or eliminate competition;

(*b*) discriminatory pricing and discrimination, in terms and conditions, in the supply or purchase of goods or services, including by means of pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods, digital products or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(*c*) making the supply of goods, digital products or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods, digital products or the provision of competing or other services;

(*d*) making the supply of particular goods, digital products or services dependent upon the purchase of other goods, digital products or services from the supplier to the consignee;

(*e*) imposing restrictions where or to whom or in what form or quantities goods or digital products supplied or other goods may be sold or exported; or

(*f*) minimum resale price maintenance.

(3) An enterprise which contravenes this section shall be liable to an administrative order from the Commission.

Defences for anti-competitive agreements

25. Section 24 (1) shall not apply if it is shown that the agreement, decision or concerted practice contributes to improving the production or distribution of goods or digital products or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not—

(*a*) impose on the enterprises concerned, restrictions which are not indispensable to the attainment of these objectives; or

(*b*) afford such enterprises the possibility of eliminating competition for a substantial market for the goods, digital products or services in question.

Prohibited activities

26.—(1) An enterprise shall not, on the market, engage in any of the following activities—

(*a*) price fixing;

(*b*) collusive tendering and bid-rigging;

(*c*) market or customer allocation agreements;

(*d*) collective action to enforce arrangements; or

(*e*) concerted refusals to supply goods, digital products or services to potential purchasers.

(2) A vertical agreement between enterprises is hereby prohibited per se, and shall be void, to the extent that the agreement involves minimum re-sale price maintenance.

(3) This section shall apply to formal, informal, written and unwritten agreements and arrangements.

(4) This section shall not apply where enterprises are dealing with each other in the context of a common entity, where they are under common control or where they are otherwise not able to act independently of each other.

(5) An enterprise which contravenes this section shall be liable to an administrative order from the Commission.

(6) For the purposes of this section, "per se" in relation to a prohibited practice, means a practice which is prohibited in all circumstances so that it is not necessary for the Commission to demonstrate that it has anti-competitive effects.

Prohibition of agreements between enterprises at the same level of production and supply

27.—(1) Without prejudice to section 26 (1), the following types of agreements between enterprises at the same level of production and supply of any good or service, including agreements between members of a trade association, are declared to be anti-competitive trade practices and are prohibited and void—

(*a*) unjustifiable exclusion from a trade association of any person carrying on or intending to carry on in good faith the trade in relation to which the association is formed; or

(*b*) making of recommendations, directly or indirectly, by a trade association, to its members or to any class of its members which relate to the—

(i) prices charged or to be charged by such members or any such class of members or to the margins included or to be included in the prices or to the pricing formula used or to be used in the calculation of those prices; or

(ii) terms of sale, including discount, credit, delivery, and product and service guarantee terms, of such member or any class of members and which directly affects prices or profit margins included in the pricing formula.

(2) Any enterprise, trade association, or member of a trade association which contravenes the provisions of subsection (1) shall be liable to an administrative penalty in the form of a monetary penalty of up to ten per cent of its annual income and in the event that the trade association has no income, the members of the trade association shall be jointly and severally liable to a monetary penalty of—

(*a*) up to ten per cent of annual turnover, in the case of an enterprise; or

(*b*) up to five per cent of annual income, in the case of an individual.

(3) For the sake of completeness and clarity, any agreements, such as decisions of association of enterprises and concerted practices between enterprises in a horizontal competing relationship in a market, which is made in violation of this section, shall not be subject to any of the defences as provided for under section 25.

Prohibition of abuse of dominance

28.—(1) An enterprise, whether on its own or in concert with other enterprises, in a dominant position shall not abuse its dominance.

(2) An enterprise shall be deemed to have abused its dominant position contrary to this section if it impedes the maintenance or development of effective competition, and in particular, if it engages in conduct which includes—

(*a*) predatory behavior, including the use of cost pricing to damage, hinder or eliminate competition;

(*b*) excessive pricing;

(*c*) discriminatory pricing and discrimination in terms and conditions, in the supply or purchase of goods or services, including using pricing policies in transactions between affiliated enterprises which overcharge or undercharge for goods, digital products or services purchased or supplied as compared with prices for similar or comparable transactions outside the affiliated enterprises;

(*d*) making the supply of goods, digital products or services dependent upon the acceptance of restrictions on the distribution or manufacture of competing or other goods or the provision of competing or other services;

(*e*) making the supply of goods, digital products or services dependent upon the purchase of other goods, digital products or services from the supplier to the consignee;

(*f*) imposing restrictions where, on whom, or in what form or quantities, goods or digital products supplied or other goods or digital products may be sold or exported;

(*g*) resale price maintenance;

(*h*) margin squeeze; or

(*i*) refusal to supply goods or services.

(3) An enterprise, either by itself or acting together with others, is deemed to have a dominant position in a market, if it has—

(*a*) the actual capacity to control prices or other commercial conditions;

(*b*) the actual capacity to eliminate or restrain competition in the market;

(*c*) the actual capacity to set barriers against entry of others into the market;

(*d*) a position in the market which enables it to operate in the market to a substantial extent independently of competitors, suppliers, and buyers;

(*e*) at least forty per cent or more of the shares in the market; or

(*f*) operated, or continues to operate, in a manner which demonstrates a combination of any of the aforementioned factors.

(4) An enterprise which contravenes this section shall be liable to an administrative order from the Commission.

Defences observed for abuse of dominance

29.—(1) An enterprise shall not be treated as abusing a dominant position if it is shown that—

(*a*) its behaviour was exclusively directed at improving the production or distribution of goods, digital products or to promoting technical or economic progress and that the consumers were allowed a fair share of the resulting benefit; or

(*b*) the effect or likely effect of its behaviour in the market is the result of its superior competitive performance.

(2) Without prejudice to the generality of subsection (1), an enterprise shall not be treated as abusing its dominant position where it seeks to enforce any right existing by virtue of any copyright, patent, registered design or trademark, other property right, or know-how, provided that the exercise of those rights does not—

(*a*) have the effect of unreasonably lessening competition in a market; and

(*b*) impede the transfer and dissemination of technology.

Grant of authorizations

30.—(1) Subject to subsection (2), any person who proposes to enter into, or carry out—

(*a*) an agreement;

(*b*) a class of agreements under section 24 (1); or

(*c*) an agreement which, in that person's opinion, is an agreement affected or prohibited by this Act,

may apply to the Commission for an authorization to do so in the prescribed form and upon payment of the prescribed fee.

(2) A professional association whose rules contain a restriction that has the effect of lessening competition in a market may apply to the Commission for authorization under subsection (1).

(3) Upon receipt of an application under subsection (1), the Commission shall—

(*a*) publish in a daily newspaper of general circulation in Malawi, a notice of the application; and

(*b*) give interested parties, fourteen days from the date of that notice, to make representations concerning the application.

(4) After considering an application and any representations received in relation to the application, the Commission may—

(*a*) if it is satisfied that the agreement is—

(i) likely to promote the public benefit;

(ii) based on the exercise of an intellectual property right or know-how;

(iii) an application for an exemption by a trade association or professional association; or

(iv) likely indispensable to the yielding of the improvement of production or distribution of goods, digital products or services or the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit,

grant an authorization, subject to such terms and conditions as it considers appropriate and for such time as it may specify; or

(*b*) refuse to grant an authorization and in that case, shall inform the applicant, in writing, of the reasons for refusal.

(5) The Commission may, in relation to an authorization under this section—

(*a*) revoke an authorization previously granted, where it determines that the applicant misrepresented material facts, in order to secure the grant of the authorization or did not comply with the terms of the grant of the authorization;

(*b*) investigate the circumstances surrounding the grant of an authorization, to determine whether there has been a non-compliance with the terms of the grant of an authorization or whether a revocation is warranted; or

(*c*) impose a monetary penalty of up to ten per cent of an enterprise's gross annual turnover, for the submission of any misleading information to secure an authorization or for non-compliance with the terms of the grant of an authorization.

(6) The Commission shall publish a notice of its decision under subsection (4), in such manner and form as it considers appropriate.

(7) The Commission may authorize all, or part, of the rules of a professional association from the provisions of subsection (2) if, having regard to internationally applied norms, any restriction contained in those rules that has the effect of preventing or substantially lessening competition in a market is reasonably required to maintain—

(*a*) professional standards; or

(*b*) the ordinary function of the professional association.

(8) The Commission shall, where it refuses to grant authorization, inform the applicant accordingly and give the reasons therefor.

(9) The Commission may, where it considers that any rules of a professional association, either wholly or in part, should no longer be authorized under this section, revoke the authorization in respect of such rules or the relevant part of the rules, at any time after it has given—

(*a*) the professional association notice of the proposed revocation; and

(*b*) interested parties fourteen days, from the date of that notice, to make representations concerning the revocation.

Abuse of buyer power

31.—(1) Any conduct that amounts to abuse of buyer power in a market in Malawi, or a substantial part of Malawi, is prohibited and any agreement made in furtherance of such conduct shall be void.

(2) Where the Commission establishes that a sector or an enterprise is experiencing, or is likely to experience, incidences of abuse of buyer power, it may monitor the activities of the sector or enterprise and ensure compliance by imposing reporting and prudential requirements.

(3) The Commission may require industries and sectors, in which instances of abuse of buyer power are likely to occur, to develop a binding code of practice.

(4) In determining any complaint in relation to abuse of buyer power, the Commission shall consider all relevant circumstances, including the—

(*a*) nature and determination of contract terms between the concerned enterprises;

(*b*) payment requested for access to any building or infrastructure; and

(*c*) price paid to suppliers.

(5) Conduct amounting to abuse of buyer power includes—

(*a*) delays in payment of suppliers, without justifiable reason, in breach of agreed terms of payment;

(*b*) unilateral termination or threats of termination of a commercial relationship, without notice or on an unreasonably short notice period, and without an objectively justifiable reason;

(*c*) refusal to receive or return any goods and digital products or part thereof without justifiable reason in breach of the agreed contractual terms;

(*d*) transfer of costs or risks to suppliers of goods, digital products or services by imposing a requirement for the suppliers to fund the cost of a promotion of the goods, digital products or services;

(*e*) transfer of commercial risks meant to be borne by the buyer to the suppliers;

(*f*) demands for preferential terms unfavourable to the suppliers;

(*g*) demanding limitations on supplies to other buyers;

(*h*) reducing prices by a small, but significant, amount where there is difficulty in substitutability of alternative buyers or reducing prices below competitive levels; or

(*i*) bidding up prices of inputs by a buyer enterprise with the aim of excluding competitors from the market.

(6) When investigating abuse of buyer power complaints, the Commission shall be guided by any existing agreement between a buyer enterprise and supplier enterprise.

(7) An agreement between a buyer enterprise and a supplier enterprise shall include—

(*a*) the terms of payment;

(*b*) the payment date;

(*c*) the interest rate payable on late payment;

(*d*) the quantity of goods to be purchased;

(*e*) the conditions for termination and variation of the contract with reasonable notice; and

(*f*) a mechanism for the resolution of disputes.

(8) A person or an enterprise which contravenes this section shall be liable to an administrative order from the Commission.

Remedies and decisions of the Commission for anti-competitive conduct

32.—(1) Where the Commission is considering a complaint on anti-competitive business conduct, the Commission shall convene a hearing for such purpose and determine the matter.

(2) After consideration of any investigation report, written representations and any oral submissions made during a hearing, the Commission may issue any of the administrative orders provided for under section 22.

Advisory opinion

33.—(1) A person may apply to the Commission for a non-binding written opinion regarding the application of one or more provisions of the Act.

(2)An application under subsection (1) shall be—

(*a*) made in a prescribed form; and

(*b*) accompanied by—

(i) a prescribed fee; and

(ii) prescribed supporting documentation.

Market studies and market inquiries

34.—(1) The Commission may, where it has reasonable grounds to suspect that an unfair trading practice, or a prevention, restriction or distortion of competition is occurring—

(*a*) within a particular sector of the economy; or

(*b*) within a particular type of agreement occurring across various sectors,

conduct a market study or a market inquiry.

(2) For the purposes of a market study or a market inquiry under this Part, the Commission may invite interested parties to submit information to it and may exercise, in relation to any enterprise that it considers to be involved in the matters covered by the study or inquiry, its powers of investigation under this Act.

(3) The Commission shall, at the conclusion of a market study or a market inquiry, publish its findings in a daily newspaper of general circulation in Malawi.

PART VI—REVIEW AND CONTROL OF MERGERS

Merger defined

35.—(1) For the purposes of this Part, a merger occurs when one or more enterprises directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another enterprise.

(2) A merger contemplated in subsection (1) may be achieved in any manner, including—

(*a*) the purchase or lease of shares, acquisition of interest, or purchase of assets of the other enterprise in question;

(*b*) the acquisition of a controlling interest in a section of the business of an enterprise capable of itself being operated independently, whether or not the business in question is carried on by an enterprise;

(*c*) the acquisition of an enterprise under receivership by another enterprise either situated in or outside Malawi;

(*d*) acquiring, by whatever means, the controlling interest in a foreign enterprise that has a controlling interest in a subsidiary in Malawi;

(*e*) in the case of a conglomerate enterprise, acquiring the controlling interest of another enterprise or a section of the enterprise being acquired capable of being operated independently;

(*f*) vertical integration;

(*g*) exchange of shares between or among enterprises which result in substantial change in ownership structure through whatever strategy or means adopted by the concerned enterprises; or

(*h*) amalgamation, takeover or any other combination with the other enterprise.

Transactions subject to merger control

36.—(1) A transaction that is likely to result in—

(*a*) the acquisition of control;

(*b*) the acquisition of assets related to a relevant market or to the business of the acquiring firm;

(*c*) the acquisition of at least forty per cent share of any market or such other amount of the market as the Commission, may prescribe;

(*d*) a lasting change to the structure of, or have a substantial effect on commerce in, or a local nexus to the domestic market; or

(*e*) a joint venture which results in an acquisition of control over a party or results in a performance of activities on a lasting basis by an autonomous enterprise,

shall be deemed to as a merger under this Act and shall be subject to merger control proceedings as provided for under this Act.

(2) For the avoidance of doubt, this Act shall not apply to mergers or transactions undertaken by affiliated enterprises, unless the acquisition results in a transfer of joint control to sole control.

Mergers to require formal approval

37. A transaction which falls within the meaning of section 35 shall not be completed in Malawi, unless the Commission grants a formal approval to that effect as provided under section 43.

Acquisition of control defined

38.—(1) A person shall be deemed to have acquired control of an enterprise if that person—

(*a*) beneficially owns more than one-half of the issued share capital or business or assets of the enterprise;

(*b*) is entitled to vote a majority of the votes that may be cast at a general meeting of the enterprise, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that enterprise;

(*c*) is able to appoint, or to veto the appointment of, a majority of the directors of the enterprise;

(*d*) is a holding company, and the enterprise is a subsidiary of that company as contemplated under the Companies Act;

Cap. 46:03

(*e*) in the case of the enterprise being a trust, has the ability to control the majority of the votes of the trustees or to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust;

(*f*) in the case of the enterprise being a nominee enterprise, owns the majority of the members' interest or controls directly or has the right to control the majority of members' votes in the nominee enterprise; or

(*g*) has the ability to materially influence the policy of the enterprise in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (*a*) to (*f*).

(2) For the purposes of subsection (1)(*a*), the purchase or lease of shares, acquisition of an interest, or purchase of assets of the other enterprise in question shall not be deemed as acquisition of control in the following circumstances—

(*a*) where the acquisition of shares or voting rights is by a person acting as a securities underwriter or a registered stockbroker of a stock exchange, on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be;

(*b*) where the acquisition is solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold twenty-five per cent or more of the total shares or voting rights of the company, of which shares or voting rights are being acquired, directly or indirectly or in accordance with the execution of any document including a share holders' agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired;

(*c*) where the acquirer, prior to acquisition, already controls fifty per cent or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control;

(*d*) where the acquisition is not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise whose assets are being acquired, except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired,

irrespective of whether such assets are organised as a separate legal entity or not;

(*e*) where the acquisition is made pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to acquisition of control; or

(*f*) where the acquisition is of stock-in-trade, raw materials, stores and spares in the ordinary course of business.

Acquisition of relevant assets defined

39. For the purposes of section 36(*b*), assets related to the relevant market shall not include assets acquired solely as an investment or in the ordinary course of business, not leading to control of the target enterprise, except where the assets represent substantial business operations in a particular location or for a particular product or service of the enterprise being acquired, irrespective of whether or not such assets are organized as a separate legal entity.

Thresholds for proposed mergers

40. Upon the recommendation of the Commission, the Minister, may, by notice published in the *Gazette*, prescribe the threshold of combined annual turnover or assets in Malawi, either in general, or in relation to specific industries, for the purpose of determining whether a merger is a transaction subject to control within the meaning of section 36.

Assessment criteria for mergers

41.—(1) For the purposes of this Act, a transaction that falls within the circumstances provided under section 36 and which is subject to merger control proceedings, shall be subject to an assessment of the likely effects of the merger on the market, by the Commission and shall be subject to—

(*a*) a competitive effects test, to determine whether the merger is likely to substantially prevent or lessen competition, by assessing the strength of competition in the relevant market and the probability that the enterprises in the market after the merger, will behave competitively or co-operatively, considering any factor that is relevant to competition in that market, including—

(i) the structure of the markets likely to be affected by the proposed merger;

(ii) the degree of control exercised by the enterprises concerned in the proposed merger in the market and particularly the economic and financial power of the enterprises;

(iii) the nature and extent of vertical integration in the market;

(iv) the availability of alternatives to the goods, digital products or services provided by the enterprises concerned in the merger;

(v) the likely effect of the proposed merger on consumers and the economy;

(vi) the actual and potential level of import competition in the market;

(vii) the ease of entry into the market, including tariff and regulatory barriers;

(viii) the level and trends of concentration, and history of collusion, in the market;

(ix) the degree of countervailing power in the market;

(x) the dynamic characteristics of the market, including growth, innovation, and product differentiation;

(xi) whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail; and

(xii) whether the merger will result in the removal of an effective competitor; and

(*b*) a dominance test, to determine the extent to which the proposed merger would be likely to result in any enterprise, including an enterprise not involved as a party in the proposed merger, acquiring a dominant position in a market or strengthening a dominant position in a market.

(2) The Commission shall, where it appears that the merger is likely to substantially prevent or lessen competition or create a dominant position in a market or strengthen a dominant position in a market, determine whether the merger is likely to result in any technological efficiency or other pro-competitive gain which will be greater than and offset the effects of any prevention or lessening of competition that may result, or is likely to result, from the merger and would not likely be obtained if the merger is prevented.

Public interest assessment

42. The Commission shall, in considering a proposed merger under this Part, apply a public interest test in order to determine whether the merger can or cannot be justified on substantial public interest grounds, by assessing the following—

(*a*) the extent to which the proposed merger would likely affect a particular industrial sector or region;

(*b*) the extent to which the proposed merger would likely affect employment in a particular industry or sector;

(*c*) the extent to which the proposed merger is likely to affect the ability of small businesses, or firms controlled or owned by historically disadvantaged persons to become competitive;

(*d*) the extent to which the proposed merger would likely affect the ability of small enterprises to gain access to or to be competitive in any market;

(*e*) the extent to which the proposed merger would likely affect the ability of national industries to compete in international markets;

(*f*) the extent to which the proposed merger would likely result in the increase of net exports;

(*g*) the extent to which the proposed merger would likely result in an acceleration in the rate of economic development;

(*h*) the extent to which the proposed merger would likely result in a more rapid rate of technological advancement by enterprises in Malawi;

(*i*) the extent to which the proposed merger would likely result in a substantially more efficient unit with lower production or distribution costs;

(*j*) the extent to which the proposed merger would likely result in lower prices to consumers;

(*k*) the extent to which the proposed merger would, or is likely to, promote the transfer of skills, or otherwise improve the production or distribution of goods, digital products or the provision of services in Malawi; and

(*l*) the saving of a failing firm.

Formal approval of a merger

43.—(1) Where an enterprise is desirous of effecting a merger which gives rise to the result as set out under section 36, and the enterprise and all other parties to the merger have reached a good faith intention to conclude an agreement, or in the case of a public bid, where there has been an announcement of an intention to make such a bid, the enterprise shall apply to the Commission for formal approval to effect the merger, upon payment of the prescribed fee.

(2) An application made under this section shall be accompanied by such information as may be prescribed.

(3) Within ninety days after the receipt of an application under this section, the Commission shall determine whether to grant or refuse the formal approval and notify the applicant of its decision, in writing.

(4) Where the Commission is of the opinion that the period referred to in subsection (3) should be extended due to the complexity of the issues involved, it may, before the expiry of that period, notify the merging parties, in writing, of the extension which may not extend the relevant period for more than sixty days.

Commission action in relation to reviewed mergers

44.—(1) Upon the completion of its investigation of the merger, the Commission shall take any of the following actions—

(*a*) notify the parties to the merger, in writing with reasons therefor, that the merger has been approved, with or without conditions;

(*b*) notify the parties to the merger, in writing with reasons therefor, that the merger has not been approved;

(*c*) enforce its decision by registering the decision with the Court;

(*d*) make an order directed against any enterprise to the proposed merger or any other person not to proceed with the merger or a part thereof;

(*e*) make an order directing the enterprises within an agreed period to divest interests or part of their combined business or operations if the Commission is satisfied that such divestment would make the merger less likely to result in anti-competitive effects or to affect substantially the interests of consumers or the economy; or

(*f*) make an order directing any enterprise to the proposed merger to dispose of assets or shares designated by the Commission.

(2) Within fourteen days of the receipt of notification of the Commission's decision for the application of conditions, the merging enterprises may seek to reach an agreement on a merger agreement order with the Commission.

(3) Where the Commission and the merging parties agree to a merger agreement order, a copy of the agreement setting out the terms agreed between the Commission and the merging parties shall be signed by the Commission and the merging parties and registered with the Court.

(4)An enterprise that fails to comply with an order issued under subsection (1) shall be liable to an administrative order from the Commission.

Prior implementation of a merger

45. The Commission shall consider a merger to have been implemented without the formal approval required under section 43 if—

(*a*) there has been an exchange of competitively sensitive information for purposes other than valuation during due diligence, or other than on a need-to-know basis;

(*b*) there has been an actual integration of any aspect of the merging businesses, including, the integration of infrastructure, information systems, personnel, corporate identity or marketing efforts;

(*c*) there has been placement of personnel from one merging party in new positions at the other merging party; or

(*d*) there has been any effort by the acquiring party to influence or control any competitive aspect of the target's business, such as setting minimum prices, limiting discounts or restricting sales to certain customers or of certain products.

Failure to file for formal approval, or prior implementation, of a merger

46.—(1)Where the Commission is of the opinion that enterprises have, without obtaining a formal approval from the Commission pursuant to section 43, structured themselves in such a way as to constitute a merger within the meaning of section 35 or has implemented a merger within the meaning of section 45, the Commission may impose an administrative order on the enterprises.

(2) In determining an order pursuant to subsection (1), the Commission shall consider whether—

(*a*) the infringement lasted for a significant period;

(*b*) the infringement has resulted in anti-competitive effects on any part or substantial part of Malawi;

(*c*) the enterprises were in significant financial distress at the time of the implementation of the merger;

(*d*) the enterprises have brought the infringement to the attention of the Commission in a timely manner; and

(*e*) any other mitigating or aggravating circumstances.

(3) Where the Commission has become aware that there is a merger that is in the process of being implemented but has not received a formal approval from the Commission pursuant to section 43, the Commission may apply to the Court for a cease and desist order or any other interim order prohibiting the enterprises to the merger from implementing the merger prior to receiving approval.

(4) The Commission shall require the enterprises to notify the merger for purposes of curing the prior implementation of the merger and remedying any competition or public interest concerns that may have resulted from the merger.

Proposals and measures for remedying a merger

47.—(1) The Commission may—

(*a*) engage in discussions with the enterprises that are parties to the merger or with any other enterprises or individuals with a view to identifying measures which would ameliorate any effects of the merger on the public interest or competition in Malawi or any substantial part of Malawi;

(*b*) accept proposals from any enterprise involved in the merger with regard to the manner in which the merger may be put into effect; or

(*c*) unbundle or unscramble the merger.

(2) Pursuant to subsection (1)(*b*), the Commission may take the proposals into account and shall state in its approval order that the proposals form the basis of or part of its determination of the matter and shall be binding on the Commission and the enterprises who are party to the merger.

Action in relation to abandoned mergers

48. Where the enterprises that are parties to a merger have decided to abandon the merger, they shall notify the Commission of their intent and the Commission shall—

(*a*) satisfy itself that parties are in the same position as they were prior to the notification of the merger;

(*b*) notify the parties that the Commission has ceased its investigation; and

(*c*) notify the parties that the filing fee paid in respect of the merger has been forfeited.

Revocation of approval

49.—(1) The Commission may, at any time, revoke a formal approval of a merger issued under this Part, if a party to a merger—

(*a*) submitted materially incorrect or misleading information, in support of the merger; or

(*b*) fails to comply with any condition of an approval of the merger.

(2) The Commission shall, where it proposes to revoke an approved merger under subsection (1), give notice, in writing, of the proposed action to every party to the merger, and to any other person who is likely to have an interest in the matter, and call upon such party or person to submit to the Commission, within twenty one calendar days of the receipt of the notice, any representations which they may wish to make on the proposed revocation.

Negative clearance

50.—(1) Any party to a merger transaction—

(*a*) seeking clarification as to whether the proposed merger requires the formal approval of the Commission; or

(*b*) whose proposed merger is subject to review by the Commission,

may apply to the Commission for a negative clearance in the manner as may be prescribed and upon payment of a prescribed fee.

(2) A negative clearance, even if granted, shall not prohibit the Commission from revoking the clearance, if new information becomes available showing that such clearance was wrongly granted.

PART VII—UNFAIR TRADING PRACTICES

Unfair trading

51. A person shall not, in relation to a consumer—

(*a*) withhold or destroy producer or consumer goods, or render unserviceable or destroy the means of production and distribution of such goods, whether directly or indirectly, with the aim of bringing about a price increase;

(*b*) exclude liability for defective goods and services;

(*c*) in connection with the supply of goods, digital products or services, make any warranty—

(i) limited to a particular geographic area or sales point;

(ii) falsely representing that products are of a particular style, model or origin;

(iii) falsely representing that the goods or digital products are new or of specified age; or

(iv) representing that products or services have any sponsorship, approval, performance and quality characteristics, components, materials, accessories, uses or benefits which they do not have;

(*d*) engage in conduct that is likely to mislead the public as to the nature, price, availability, characteristics, suitability for a given purpose, quantity or quality of any products or service;

(*e*) supply any product which is likely to cause injury to health or physical harm to consumers, when properly used, or which does not comply with a consumer safety standard which has been prescribed under any written law;

(*f*) claim payment for unsolicited goods, digital products or services;

(*g*) engage in unconscionable conduct in carrying out trade in goods, digital products or services;

(*h*) engage in pyramid selling of goods, digital products and services;

(*i*) engage in bait selling;

(*j*) offer gifts or prizes with no intention of supplying them;

(*k*) put out an advertisement which is misleading or deceptive;

(*l*) fail to give warranty or guarantee on goods for long term use;

(*m*) engage in improper or insufficient labelling of products;

(*n*) fail to display or indicate prices of goods, digital products and services;

(*o*) fail to issue receipts or invoices on goods, digital products and services supplied;

(*p*) fail to disclose material information about goods, digital products or services; or

(*q*) engage in excessive or exploitative pricing.

Unfair consumer contracts

52.—(1) In a contract between a person and a consumer, a term of a contract shall be regarded as unfair if it causes a significant imbalance in the rights and obligations of the parties, arising under the contract, to the detriment of the consumer.

(2) An unfair contract or an unfair term of a contract between a person and a consumer shall not be binding.

(3) Notwithstanding subsection (2), the contract shall bind the parties if it is capable of being enforced without the unfair term.

Procedures and remedies for unfair trading practices

53. The investigation procedures and remedies prescribed for anti-competitive business conduct under this Act shall apply, with the necessary modifications, to unfair trading practices prohibited under this Part.

PART VIII—POWERS OF THE COURT

Civil remedies

54. A person or enterprise that has suffered loss or damage, or is likely to suffer loss or damage, by reason of an infringement of the provisions under Part V, Part VI or Part VII may apply for an appropriate order for compensation before a court of law.

Enforcement of orders of the Commission

55.—(1) The Commission or any person in whose favour, or for whose benefit, an order has been made by the Commission, may lodge a copy of the order, certified by the Commission or a person authorized by the Commission, with the Court and the Court shall forthwith register the order as an order of the High Court.

(2) An order that has been recorded pursuant to subsection (1) shall, for the purposes of enforcement, have the effect of a civil judgment of the High Court.

(3) Upon an application by the Commission, the Court may grant an order without notice or *ex-parte*, for the entry and search of any premises, for the purpose of inspecting and seizing any evidence that shall be removed from custody of the defendant and held in the custody of the Commission.

(4) Upon an application by the Commission, the Court may grant an interim order for the purpose of maintaining the status quo ante of competition on a market in Malawi, pending the outcome of an investigation by the Commission.

Appeals

56.—(1) A person or enterprise that is aggrieved by a determination of the Commission may, within thirty days from the date on which the determination has been served on the person or enterprise, as the case may be, appeal to the Court.

(2) The Court may—

(*a*) review the law as applied to the facts as set out by the Commission in its investigative report, and the facts as applied to the law by the enterprise in their written response to the Commission's determination;

(*b*) confirm, modify, or reverse the Commission's finding or any part thereof; or

(*c*) direct the Commission to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In giving any direction under this section, the Court shall advise the Commission of its reasons for doing so, and the reconsideration of the whole or any part of the matter that is referred for reconsideration.

(4) Where an appeal is brought against any determination of the Commission, any such determination shall remain in force pending determination of the appeal, unless the Court otherwise orders.

Third party liability

57.—(1) Except as otherwise provided in this Act, an enterprise which engages in conduct which constitutes—

(*a*) a contravention of any of the obligations or prohibitions imposed in Part V, Part VI or Part VII;

(*b*) aiding, abetting, counselling or procuring the contravention of any such provision;

(*c*) inducing by threats, promises or otherwise, the contravention of any such provision;

(*d*) being knowingly participating in, or party to, any such contravention; or

(*e*) conspiring with any other person to contravene any such provision,

shall be liable to a monetary penalty, in damages for any loss caused to a third party by such conduct.

(2) An action under subsection (1) may be commenced before the courts, at any time, within three years from the time when the cause of action arose.

PART IX—SETTLEMENT OF INFRINGEMENTS AND LENIENCEY PROGRAMMES

Settlement of an infringement

58.—(1) The Commission may, at any time, during or after an investigation into an alleged infringement of the prohibitions contained in this Act, enter into a settlement agreement with the enterprise or enterprises concerned.

(2) A settlement agreement referred to in subsection (1) may include—

(*a*) an award of damages to the complainant; or

(*b*) any amount proposed to be imposed as a monetary penalty.

(3) The Commission shall prescribe details for settlement of an infringement as provided under subsection (1).

Leniency programme

59.—(1) The Commission may operate a leniency programme where an enterprise that voluntarily discloses the existence of an agreement that is prohibited under this Act, and co-operates with the Commission in the investigation of the practice, may not be subjected to all or part of an administrative order imposed under this Act.

(2) The Commission shall prescribe details of the leniency programme under subsection (1).

PART X—CROSS-BORDER COOPERATION

Cooperation with multilateral or regional authorities

60.—(1) Where the Commission seeks to determine whether conduct by an enterprise in Malawi or in another member state has, as its object, the prevention, restriction or distortion of competition or has abused its dominant position in Malawi, or has an effect on consumer welfare in Malawi or where a merger notified to the Commission is likely to affect more than one member state, the Commission shall—

(*a*) request the assistance of the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, in investigating the matter; or

(*b*) where applicable, shall refer the matter to the relevant multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, to do an investigation.

(2) Where applicable, the Commission shall comply with the procedures governing requests for information and searches and seizure under the Act, when cooperating with the relevant multilateral competition or consumer protection authority or the regional competition or consumer protection authority.

(3) The Commission may request the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, to cause an investigation to be carried out under this section, where it has reason to believe that an anti-competitive agreement by an enterprise located in another member state has, as its object or effect, the prevention, restriction or distortion of competition or has abused its dominant position in Malawi.

(4) A reference or request made under subsections (2) or (3) shall be in writing and shall disclose such information as would enable the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, to make a preliminary assessment whether it should proceed to cause the investigation to be carried out.

(5) Where a multilateral competition or consumer protection authority or the regional competition or consumer protection authority, on its own initiative or at the request of the Commission is investigating a matter in respect of any anti-competitive business conduct by an enterprise in another member state, and given notice of its determination to the Commission, the Commission shall—

(*a*) assist the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, in its investigation; and

(*b*) record and register the determination with the Court.

(6) Where the Commission, on its own initiative or at the request of a multilateral competition or consumer protection authority or the regional competition or consumer protection authority has investigated a matter in respect of any anti-competitive business conduct by an enterprise in Malawi, and given notice of its

determination to the multilateral or regional competition or consumer authority, the Commission shall—

(*a*) require the assistance of the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, in its investigation; and

(*b*) record and register the determination with the Court.

(7) A determination referred to in subsections (5) (*b*) and (6) (*b*) shall be binding on all parties to the matter and shall be enforced in the same manner as an order of the Court.

(8) A party who is aggrieved by a determination of—

(*a*) the multilateral competition or consumer protection authority; or

(*b*) the regional competition or consumer protection authority,

may apply to the relevant court that has jurisdiction to review the determination or hear an appeal of such matters.

(9) The multilateral competition or consumer protection authority or the regional competition or consumer protection authority, shall, in relation to any matter referred to it or any request made to it under subsections 5(*a*) or 5(*b*), as the case may be, have power to do any act specified in Part IV and any regulations made hereunder.

(10) The provisions of the sections specified in subsection (9) shall apply, with necessary modifications, in relation to any investigation or inquiry being carried out by the multilateral competition or consumer protection authority or the regional competition or consumer protection authority, as the case may be, under the relevant laws.

(11) For purposes of this section, "member state" means a state that is party to a regional or multilateral treaty with protocols on competition and consumer protection law enforcement to which Malawi is a signatory.

Enforceability of the decisions of the multilateral or regional competition or consumer authority

61. A decision reached pursuant to an investigation conducted in accordance with this Act, by a multilateral competition or consumer protection authority or the regional competition or consumer protection authority, shall be binding on all parties to which it relates and shall be enforceable in the Court, to the same extent as a decision made by the Commission.

Cooperation with other States

62. The Commission may cooperate with other States on competition and consumer protection law and policy enforcement by written agreement provided that the terms and expressions in the agreement have the same meaning given to them in the laws of the respective countries as in the provisions under this Act.

Definitions

63. For the purposes of this Part—

(*a*) "multilateral competition or consumer protection authority" means a consumer protection authority established pursuant to a multilateral integration treaty which Malawi has ratified or domesticated into a national law; and

(*b*) "regional competition or consumer protection authority" means any competition or consumer authority established pursuant to a common market or regional integration treaty which Malawi has ratified or domesticated into a national law.

PART XI—MISCELLANEOUS

Annual reports

64.—The Commission shall, within three months after the end of each financial year, prepare and submit to the Minister a report of its activities during the preceding year and the Minister shall lay the report before the National Assembly at its next sitting.

Common seal

65.—(1) The common seal of the Commission shall be kept by the Chief Executive Officer and shall not be used, except in the manner authorized.

(2) All deeds, instruments, contracts and other documents shall be considered to be duly executed by or on behalf of the Commission—

(*a*) where they are required to be under seal, if sealed with the common seal and authenticated by the Chairperson or any other member nominated in that behalf by the Commission and the Chief Executive Officer or any other officer authorized by the Commission; or

(*b*) where they are not required to be under seal, if executed in that behalf by a member authorized by the Commission for that purpose.

(3) A deed, instrument, contract or any other document executed in accordance with subsection (2) shall, in law, bind the Commission, its assignees and its successors and may be varied or discharged in the same manner that it was executed.

(4) All courts and other persons acting in a judicial capacity shall take judicial notice of the common seal of the Commission affixed

to any document and shall presume, unless otherwise proven, that it was duly affixed.

Disclosure of interests

66.—(1) A Commissioner, member of a Committee, an invited person, an employee of the Commission or a consultant of the Commission who, or whose immediate family member is directly or indirectly interested in a private or professional or official capacity in any matter being considered by the Commission, shall—

(*a*) disclose such interest at, or before, the meeting convened to discuss that matter, the nature of his interest; and

(*b*) not take part in any deliberation or any decision-making process in relation to that matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting where that disclosure was made.

(3) A disclosure of interest made under this section shall be made—

(*a*) in the case of a member of the Commission, to the Chairperson of the Commission; and

(*b*) in case of an employee of the Commission, to the Chief Executive Officer who shall take such decision as considered appropriate in each case and submit a report thereon to the Commission.

Oath of secrecy

67. Every—

(*a*) Commissioner;

(*b*) member of a Committee;

(*c*) invited person;

(*d*) employee of the Commission; or

(*e*) consultant or any person in the service of the Commission,

shall, upon assumption of his or her office, take an oath of secrecy in the form set out in the *Schedule*.

Confidentiality

68.—(1) A person shall not, without the consent in writing given by or on behalf of the Commission, publish or disclose to any person, otherwise than in the course of his or her duties, contents of any document, communication or information which relates to, and which has come to his or her knowledge in the course of his or her duties under this Act.

(2) The Commission may prohibit the publication or communication of any information furnished or obtained, documents produced, obtained or tendered, or given to the Commission in connection with the Commission's operations.

(3) A person who publishes or communicates any information, documents or evidence, the publication of which is prohibited under subsection (1) and (2), commits an offence.

Protection of Commissioners and employees

69. No action, suit, or other proceedings shall be brought or instituted personally against any Commissioner, member of a Committee, employee of the Commission or consultant of the Commission in respect of any act done in good faith while carrying out into effect the provisions of this Act.

Offences and penalties

70.—(1) A person—

(*a*) who without sufficient cause, omits or refuses—

(i) to furnish any information when required by the Commission to do so;

(ii) to produce any document when required to do so by a notice sent by the Commission;

(iii) to attend or give evidence before the Commission in obedience to a summons issued under this Act; or

(iv) refuses to take an oath or make an affirmation as a witness or to answer any question put to him; or

(*b*) who knowingly furnishes any false information to the Commission,

commits an offence.

(2) Any person who—

(*a*) being a witness leaves a hearing of the Commission without the Commission's permission;

(*b*) insults any member or officer of the Commission;

(*c*) obstructs or interrupts a hearing of the Commission; or

(*d*) refuses to comply with a requirement of the Commission under this Act;

commits an offence.

(3) Any person who commits an offence under this Act, for which a penalty has not been specifically provided for, shall, upon conviction, be liable to—

(*a*) in the case of a natural person, a fine of K5,000,000 and imprisonment for two years; and

(*b*) in the case of a legal person, a fine of K50,000,000.

(4) Where a person is convicted of an offence under this Act and the person has not taken any action to remedy the action constituting the offence, the person shall be liable, for each continuing day, to a fine of—

(*a*) in the case of a natural person, a fine of K100,000 and imprisonment for two years; and

(*b*) in the case of a legal person, a fine of K1,000,000.

Offences committed by bodies corporate

71. Where an offence under this Act is committed by a body corporate or unincorporated body, every director or manager of the body corporate or unincorporated body shall be liable, upon conviction as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Limitation of time

72.—(1) In setting time limits under this Act, the Commission shall have regard both to the time required for the preparation of the submission and to the urgency of the case.

(2) Where appropriate and upon reasoned request made before the expiry of the original time-limit, the Commission may extend the time-limits.

(3) An investigation into an alleged infringement of the provisions of this Act shall be initiated within three years from the date the infringement ceased.

Regulations, guidelines, notices and forms

73.—(1) The Minister may, on recommendation from the Commission, make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for—

(*a*) the forms, fees payable and the procedure for applications to be made under this Act;

(*b*) the information and documents to be submitted in support of applications to be made under this Act;

(*c*) the form of an exemption and the conditions therefor;

(*d*) the manner and form in which the Commission shall issue an advisory opinion;

(*e*) the form of the negative clearance and the conditions under which it is issued;

(*f*) the threshold for prior notification to the Commission of a merger transaction;

(*g*) the manner and form of lodging appeals or reports with the Commission;

(*h*) the manner and form of serving notices on any person by the Commission, and the manner of production of books, records or documents;

(*i*) the manner in which the Commission shall carry out an investigation under this Act;

(*j*) the manner and form in which the Commission shall institute an inquiry under this Act; and

(*k*) generally the carrying into effect of the purposes of this Act.

(3) Notwithstanding section 21(*e*) of the General Interpretation Act, the regulations made under this Act may create offences whose penalties may not exceed— Cap.1:01

(*a*) in the case of a natural person, a fine of K1,000,000 and imprisonment for one year; and

(*b*) in the case of a legal person, a fine of K20,000,000.

(4) The Commission may issue guidelines, notices and prescribe forms for purposes of providing guidance or directions, as the case may be, for better carrying into effect the provisions of this Act.

Government to be bound

74. This Act shall apply to, and bind, the Government.

Repeal and savings Cap.48:09

75.—(1) Subject to subsection (2), the Competition and Fair Trading Act is repealed.

(2) Any subsidiary legislation made under the repealed Act, in force immediately before the commencement of this Act—

(*a*) shall remain in force, unless in conflict with this Act;

(*b*) shall be deemed to be subsidiary legislation made under this Act; and

(*c*) may be replaced, amended, revoked, or repealed by subsidiary legislation made under this Act.

Transitional matters

76.—(1) Any approvals, authorizations, permission, directions, orders, and any other decisions issued, granted or made in accordance with the repealed Act shall, unless otherwise expressly provided for in this Act or in any other written law, continue to be in force and be deemed to have been issued, granted or made, as the case may be, under this Act.

(2) Members of the Commission as constituted immediately before the coming into force of this Act, shall continue to hold office as Commissioners until the appointment of new Commissioners in accordance with this Act.

(3) Any legal proceedings commenced before the coming into force of this Act by, or against, the former Commission, shall be deemed to have been commenced by, or against, the Commission.

(4) All property, funds and assets which, immediately before the commencement of this Act were vested in the former Commission, for the use of the former Commission shall, on the commencement of this Act, and without further assurance, be deemed to have vested in, or to have been acquired by, or on behalf of, the Commission, subject to all interests, liabilities, charges, obligations and trusts affecting such property, funds and assets.

(5) All debts, obligations, liabilities, agreements and other arrangements existing at the commencement of this Act and vested in, acquired, incurred or entered into by, or on behalf of, the former Commission, shall, on the commencement of this Act, be deemed to have vested in, or to have been acquired, incurred or entered into by, or on behalf of, the Commission, and shall become enforceable by, or against, the Commission to the same extent as they were enforceable by, or against, the former Commission.

(6) Any person who, immediately prior to the commencement of this Act is employed by the former Commission, shall be deemed to have been transferred to the employment of the Commission under his or her former terms and conditions of service, and, for the purpose of determining his or her rights thereunder, his or her service shall be regarded as continuous from the time he was appointed by the former Commission.

(7) For purposes of this section, "former Commission" means the Commission established under the Act repealed under section 75.

SCHEDULE (s.67)

OATH OF SECRECY

I,……..…., being a Commissioner/member of a Committee/invited person/employee of the Commission/ consultant of the Commission, do hereby swear/affirm that I will freely without fear or favour, affection, or ill-will, discharge the functions of a Commissioner/member of a Committee /invited person/employee of the Commission/consultant of the Commission and that I will not directly, or indirectly reveal any matter related to such functions to any unauthorized person or otherwise than in the course of duty. So, help me God.

SWORN/AFFIRMED at ……this… day of …….., 20…

Before me:

……...……
Commissioner for Oaths

Passed in Parliament this fifth day of April, two thousand and twenty-four.

FIONA KALEMBA
Clerk of Parliament